

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 174.

THE UNITED STATES, APPELLANTS, vs. LEWIS A. EATON.

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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

1911

REPORT OF THE PHYSICS DEPARTMENT

FOR THE YEAR 1911

THE PHYSICS DEPARTMENT OF THE UNIVERSITY OF CHICAGO  
HAS THE HONOR TO ANNOUNCE THAT THE FOLLOWING  
FACULTY MEMBERS HAVE BEEN ELECTED TO THE  
ACADEMY OF NATURAL SCIENCES OF THE UNITED STATES  
OF AMERICA FOR THE YEAR 1911  
PROFESSOR ROBERT A. MILLIKAN  
PROFESSOR WILLIAM D. HENRY  
PROFESSOR ALBERT A. MICHAELSON  
PROFESSOR HENRY G. JONES  
PROFESSOR EDWARD W. WATSON  
PROFESSOR JAMES H. JOYNT  
PROFESSOR JOHN W. COOPER  
PROFESSOR ALBERT A. MICHAELSON  
PROFESSOR HENRY G. JONES  
PROFESSOR EDWARD W. WATSON  
PROFESSOR JAMES H. JOYNT  
PROFESSOR JOHN W. COOPER

1 In the Court of Claims.

LEWIS A. EATON }  
 vs. } 18691.  
 THE UNITED STATES. }

I.—*Petition, filed December 5, 1894.*

*To the honorable the Chief Justice and Judges of the Court of Claims:*

I. Your petitioner, Lewis A. Eaton, respectfully represents that he is a citizen of the United States, residing at Mebane, in the State of North Carolina, and has always borne true allegiance to the United States.

II. That heretofore, to wit, on the 13th day of June, 1892, he was residing at Bangkok, in the Kingdom of Siam, and was on said day duly nominated and appointed as vice-consul-general of the United States at said place to represent the Government of the United States in all things pertaining to the office of minister resident and consul-general of the United States at Bangkok, in the Kingdom of Siam, the minister resident and consul-general, Sempronius H. Boyd, being at that time unable to attend to his official duties by reason of severe illness, and thereupon claimant accepted the said appointment, took the oath of office, and entered upon the duties thereof, and was duly recognized as vice-consul-general by the Government of the United States and by the Government of Siam.

2 III. That on the 11th day of July, 1892, the said Sempronius H. Boyd, then minister resident and consul-general of the United States at Bangkok, Siam, took his departure from his post of duty for the United States, and left claimant in sole charge of the legation and consulate of the United States at said post, having duly notified the Department of State of the facts, and thereupon claimant assumed charge of said legation and consulate, the duties of which he had been actually discharging since the 13th day of June, 1892, during the illness of said Sempronius H. Boyd, and from and after the departure of said Boyd claimant continued in sole charge of said legation and consulate, and discharged the duties thereof, both of a diplomatic and consular character, with the acquiescence and approval and under the direction of the Department of State, up to and including the 17th day of May, 1893, when he was relieved of his duties.

IV. That upon receipt by the Department of State of the aforesaid notification from said Sempronius H. Boyd, as to his departure from his post, said Department, on September 2, 1892, transmitted to claimant a form bond prepared for his signature and execution as acting consul-general of the United States at Bangkok, Siam, which was duly executed by claimant and his sureties and forwarded to the Department of State, and on the 3rd day of January, 1893, said Department notified claimant that said bond had been approved and deposited with the Secretary of the Treasury. (See Exhibit A, herewith.)

Thereafter, on the 24th of January, 1893, the Department of State returned said bond to claimant for cancellation, and enclosed another form of bond prepared for his signature and execution as vice-consul-general of the United States at Bangkok, Siam, which was duly executed

by claimant and his sureties and transmitted to the Department of State; and thereafter, on the 28th of April, 1893, said Department notified claimant that said bond as vice-consul-general had been approved and deposited with the Secretary of the Treasury, and that it replaced the bond given by him as acting consul-general, which had been rejected by the First Comptroller of the Treasury. (See Exhibit B, herewith.)

V. That claimant did not make or enter into any agreement with the said Sempronius H. Boyd as to the rate of compensation or proportion of the salary that claimant should receive during said Boyd's absence from his post after July 11, 1892, as aforesaid, and, further, claimant did not make or execute any waiver of his claim to salary during said Boyd's absence, and did not claim or receive any salary or pay as interpreter or prison-keeper or in any capacity other than that of vice-consul-general in charge of the legation and consulate-general at Bangkok during the time he was so in charge; that claimant was and is lawfully entitled for his services in discharging the duties of the office of minister resident and consul-general of the United States at Bangkok from and after the departure of said Boyd from his post of duty on July 11, 1892, as aforesaid, up to the expiration of his leave of absence of sixty days after his arrival in the United States, to wit, from July 12, 1892, to October 26, 1892, at the rate of one-half of the salary of five thousand dollars per annum, provided by law for said post, amounting to \$726.90, and from October 27, 1892, to and including May 17, 1893, at the full rate of five thousand dollars per annum, amounting to \$2,792.35.

VI. That claimant rendered his accounts for salary for the entire period from June 13, 1892, to May 17, 1893, in which he claimed and charged one-half the salary provided by law for the office of minister resident and consul-general at Bangkok, Siam, from June 13, 1892, to July 11, 1892, while he was discharging the duties of the office during the illness of the minister resident and consul-general, and one-half the salary from and after the date of the departure of the minister resident and consul-general from his post up to the expiration of his leave of absence for sixty days after his arrival in the United States, to wit, from July 12, 1892, to October 26, 1892, and the full salary from October 27, 1892, up to and including May 17, 1893; and claimant credited in said accounts the total amount of fees, both official and notarial or unofficial, received by him during the whole of said period, amounting to \$245.41, of which the sum of \$68.00 was for official fees, and the sum of \$177.41 for notarial or unofficial fees, as per Exhibit C, hereto attached.

VII. That said accounts so rendered were duly audited and adjusted by the accounting officers of the Treasury, by report No. 162708, as follows:

Item 1. One-half salary claimed from June 13, 1892, to July 11, 1892, during the illness of the minister resident and consul-general and prior to his departure from his post, amounting to \$198.36, was disallowed.

Item 2. One-half salary claimed from July 12, 1892, after the departure of the minister resident and consul-general from his post, to October 26, 1892, the date of the expiration of his leave of absence of sixty days after his arrival in the United States, amounting to \$726.90, as aforesaid, was suspended for further information.

Item 3. The full salary claimed from October 27, 1892, to May 17, 1873, amounting to \$2,792.35, as aforesaid, was allowed and credited to claimant, and the total amount of fees, both official and notarial or unofficial, received by claimant, amounting to \$245.41 as aforesaid, was charged to him, leaving a balance of \$2,546.94, due claimant from the United States, which balance was duly certified by the First Comptroller of the Treasury and credited to claimant upon the books of the Treasury, and claimant was duly notified thereof by the First Comptroller of the Treasury on December 4, 1893.

VIII. The claimant thereafter, to wit, on the 26th day of April, 1894, transmitted to the First Comptroller of the Treasury the information and explanations required as to the foregoing suspended item No. 2, amounting to \$726.90, and asked that the same be allowed and paid to him, which was refused, and said amount remains disallowed and unpaid; and claimant, without admitting or conceding the correctness of the settlement of his accounts as made by the accounting officers of the Treasury as aforesaid, or of any of the disallowances and suspensions made therein, made demand for the payment of the aforesaid balance of \$2,546.94, set forth in the foregoing item No. 3, which had been allowed and certified and entered to the claimant's credit upon the books of the Treasury, but payment thereof was refused, and said balance is still withheld and unpaid.

IX. That claimant also rendered his accounts of disbursements for contingent expenses of the legation and consulate-general of the United States at Bangkok from July 1, 1892, to April 30, 1893, supported by the proper vouchers, and said accounts were duly adjusted by the accounting officers of the Treasury, by report No. 162,709, in which the sum of \$5.73, expended and paid by claimant for lanterns and candles for the use of said legation during the quarter ending September 30, 1892, was suspended for explanation, which was thereafter duly furnished to the First Comptroller of the Treasury, to wit, on the 26th day of April, 1894, but the said sum of \$5.73 has not been paid to claimant, and remains disallowed and unpaid.

X. That there is justly due and owing to the claimant the following-named amounts:

A. For notarial or unofficial fees charged to him in the settlement of his salary account by report No. 162708, as aforesaid, as per Exhibit C herewith .....	\$177.41
B. For the item of salary suspended in the settlement of his accounts for salary by report No. 162708, as aforesaid. ....	726.90
C. For the balance of salary found due to claimant by report No. 162708, as aforesaid, and certified to his credit. ....	2,546.94
D. For item expended for contingent expenses by claimant, and suspended in the settlement of his account therefore by report No. 162709, as aforesaid. ....	5.73
Making in all the sum of .....	3,456.98

Which has not been paid, or any part thereof.

XI. That no other action than as aforesaid has been had on this claim in Congress or by any other Department of the Government.

The petitioner is the sole owner of this claim and the only person interested therein. No assignment or transfer of this claim or any part thereof or interest therein has been made, and your petitioner believes the facts as stated in this petition to be true.

The petitioner is justly entitled to the amount herein claimed from the United States, after allowing all just credits and set-offs.

Wherefore your petitioner prays judgment against the United States for three thousand four hundred and fifty-six dollars and ninety-eight cents (\$3,456.98).

LEWIS A. EATON.

By J. R. GARRISON,  
*Attorney for Claimant.*

CHANEY & RANNELS, *Counsel.*

STATE OF NORTH CAROLINA,  
*County of Alamance, ss.:*

Lewis A. Eaton, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition; that he has read the same, and the matters therein stated are true to the best of his knowledge and belief.

LEWIS A. EATON.

Subscribed and sworn to before me this first day of December, A. D. 1894.

[SEAL.]

W. E. WHITE,  
*Notary Public.*

#### EXHIBIT A.

Know all men by these presents that we, Lewis A. Eaton, principal, and Glenn Culbertson and John B. Dunlap, sureties, are held and firmly bound to the United States of America in the sum of three thousand dollars, money of the said United States, to the payment whereof we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators.

Witness our hands and seals this thirteenth day of June, 1892.

The condition of the above obligation is such that if the above bounden

Lewis A. Eaton, appointed acting consul-general of the United States at Bangkok, Siam, shall truly and faithfully discharge the duties of his said office according to law, and shall also truly and faithfully account for, pay over, and deliver up all moneys, goods, effects, books, records, papers, and other property which shall come into the hands of the said Lewis A. Eaton, or to the hands of any person for his use as such acting consul-general, under any law now or hereafter enacted, and faithfully perform all other duties now or hereafter lawfully imposed upon him as such acting consul-general, then this obligation to be void; otherwise, to remain in full force.

LEWIS A. EATON.	[SEAL.]
GLENN CULBERTSON.	[SEAL.]
JOHN B. DUNLAP.	[SEAL.]

Signed, sealed, and delivered in the presence of:

A. WILLARD COOPER.

JOHN A. EAKIN.

I, L. A. Eaton, acting consul-general of the United States of America, hereby certify that Glenn Culbertson and John B. Dunlap, the sureties

named in the within bond, are severally sufficient to pay the penalty thereof, and that they are residents of Bangkok, Siam.

L. A. EATON,  
*Acting Consul-General.*

Dated at Bangkok, November 17, 1892.

[Seal of U. S. Consulate-General.]

DEPARTMENT OF STATE,  
*Washington, January 3, 1893.*

Approved.

\_\_\_\_\_,  
*Secretary of State.*

[Signature of Secretary of State was erased from original bond when returned for cancellation.]

Mr. Eaton is a citizen of the United States.

F. O. ST. CLAIR,  
*Chief of the Consular Bureau.*

9 [Cancelled; see letter from 1st Comptroller, January 7, 1893.]  
[Original bond filed in this case.]

EXHIBIT B.

Know all men by these presents: That we, Lewis A. Eaton, principal, and Glenn Culbertson and John Barr Dunlap, sureties, are held and firmly bound to the United States of America in the sum of two thousand dollars, money of the said United States, to the payment whereof we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators.

Witness our hands and seals this thirteenth day of June, 1892.

The condition of the above obligation is such that if the above-bounden Lewis A. Eaton, appointed vice-consul-general of the United States at Bangkok, Siam, shall truly and faithfully discharge the duties of his said office according to law, and shall also truly and faithfully account for, pay over, and deliver up all moneys, goods, effects, books, records, papers, and other property which shall come into the hands of the said Lewis A. Eaton, or to the hands of any person for his use as such vice-consul-general under any law now or hereafter enacted, and faithfully perform all other duties now or hereafter lawfully imposed upon him as such vice-consul-general, then this obligation to be void; otherwise, to remain in full force.

LEWIS A. EATON. [SEAL.]  
GLENN CULBERTSON. [SEAL.]  
JOHN B. DUNLAP. [SEAL.]

Signed, sealed, and delivered in the presence of—

EUGENE PRESSLY DUNALP.  
FRANK LOVELESS SNYDER.

10 I, Lewis A. Eaton, acting consul-general, hereby certify that Glenn Culbertson and John Barr Dunlap, the sureties named in



the within bond, are severally sufficient to pay the penalty thereof, and that they are residents of Bangkok, Siam.

LEWIS A. EATON,  
*Acting Consul-General.*

Dated at Bangkok, Mar. 14th, 1893.

[Seal of U. S. consulate-general.]

DEPARTMENT OF STATE,  
*Washington, April 28, 1893.*

Approved.

ALVEY A. ADEE,  
*Acting Secretary of State.*

Mr. Eaton is a citizen of the United States.

W. E. FAISON,  
*Chief of the Consular Bureau.*

[Certified copy filed in this case.]

### EXHIBIT C.

Abstract of notarial or unofficial fees included in the record of fees covering the period from June 13, 1892, to May 17, 1893, transmitted to the accounting officers of the Treasury by Lewis A. Eaton, U. S. vice-consul-general at Bangkok, Siam, being part of the amount of \$245.41, credited as fees in his account of salary for said period, and charged to him in the settlement thereof by report No. 162708.

11 I. For settlement of estates of decedents. Unofficial under decision of Supreme Court, U. S., in *United States vs. Mosby*, 133 U. S., 273, and in *Stahel vs. United States*, 26 Court of Claims, 193:

Estate of John Robertson .....	\$9.72
" " J. M. Small .....	58.19
	<hr/> \$67.91

II. Fees for unofficial and notarial services, not embraced in the tariff of official fees, nor required by law or regulations:

(a) Marriage certificates. All in excess of the fee of \$1.00 fixed by the tariff of fees, 3 at \$1.50 each .....	4.50
(b) Seals to sundry documents, 14 at \$2.00 each .....	28.00
(c) Servant certificate .....	6.00
(d) Letter and seal .....	2.00
(e) Certifying 2 documents .....	4.00
(f) Preparing complaint .....	2.00
(g) Judge's fees .....	35.00
(h) Fine .....	25.00
(i) Seals on summons, 3 at \$1.00 each .....	3.00
	<hr/> \$109.50

Total .....\$177.41

The following are the items which make up the foregoing amount of \$177.41, with the names and dates:

1892.		
July 2.	Mr. Cooper. Marriage certificate. Excess of amount collected over \$1.00 .....	\$1.50
"	7. Mr. Phraner. Marriage certificate. Excess of amount collected over \$1.00 .....	1.50
"	9. Mr. Phraner. Seal .....	2.00
Aug. 11.	Chin Huet. Servant certificate .....	6.00
Sep. 20.	William Aijees. Seal .....	2.00
"	27. " 2 seals .....	4.00
	Oct. 29. John Robertson's estate, settlement of .....	9.72
12	Nov. 21. C. E. Eckels. Marriage certificate. Excess of amount collected over \$1.00 .....	1.50



1893.				
March	24.	Dr. M. A. Cheek.	Letter and seal.....	\$2. 00
"	24.	" " "	Certifying 2 documents.....	4. 00
"	24.	" " "	Complaint.....	2. 00
"	24.	" " "	2 seals.....	4. 00
"	24.	Hans Adamson.	1 seal.....	2. 00
		Judge's fee.....		5. 00
		Seal on summons.....		1. 00
		Fine.....		25. 00
		Judge's fee.....		15. 00
		Seal on summons.....		1. 00
		Judge's fee.....		15. 00
		Seal on summons.....		1. 00
April	10.	Lucy Dunlop.	One seal.....	2. 00
"	10.	E. P. Dunlop.	Five seals.....	10. 00
May	17.	J. P. Castenkiold.	One seal.....	2. 00
"	17.	J. M. Small's estate, settlement of.....		58. 19
Total .....				177. 41

II.—*Petition of Sempronius Boyd vs. The United States, No. 18527, filed June 16, 1894, and the case consolidated with the case of Lewis A. Eaton vs. The United States, No. 18691, January 4, 1895, by order of court, on motion of the defendants, claimants consenting thereto.*

The claimant, Sempronius H. Boyd, by Thomas C. Fletcher, his attorney, states that heretofore, to wit, on the first day of October, A. D. eighteen hundred and ninety, he, the said Boyd, was duly appointed, commissioned, and qualified as minister resident and consul-general of the United States at and for the Kingdom of Siam at Bangkok; that he duly qualified and entered upon the duties of such minister and consul-general at a salary fixed by law at five thousand dollars per year; that he faithfully performed the said duties thenceforth until the 11th day of February, A. D. eighteen hundred and ninety-three; that his salary as such minister and consul-general was promptly and duly paid to and received by him up to the first day of July, A. D. 1892, since which date the said salary nor any part thereof has not been paid; that

13 there is due and owing to him from the United States, as such minister and consul-general, for salary at the said rate of five thousand dollars per annum, the sum of three thousand and fifty-five dollars and fifty-five cents, being for salary aforesaid from the 1st day of July, 1892, to the 11th day of February, 1893. Wherefore claimant asks judgment against the said United States for the said sum of three thousand and fifty-five dollars and fifty-five cents.

SEMPRONIUS H. BOYD,

*Claimant.*

By THO C. FLETCHER,

*His Attorney.*

UNITED STATES OF AMERICA, ss:

Thomas C. Fletcher, attorney for Sempronius H. Boyd, the above claimant, being duly sworn, upon his oath states that the foregoing petition and the matters therein as stated are true to the best knowledge, information, and belief of affiant.

THO C. FLETCHER.

Subscribed and sworn to before me this 16th day of June, 1894.

[SEAL.]

JOHN RANDOLPH,

*Assistant Clerk Court of Claims.*

On the 19th day of November, 1894, the death of the said Sempronius H. Boyd having been suggested, the suit was revived in the name of Margaret M. Boyd, as his executrix.

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III.—*Traverse, filed October 30, 1896.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petitions be dismissed.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

J. E. DODGE,  
*Assistant Attorney-General.*

15 IV.—*Findings of fact and conclusions of law, filed February 10, 1896.*

This case having been heard by the Court of Claims, the court upon the evidence find the facts to be as follows:

I.

October 1, 1890, Sempronius H. Boyd was commissioned as minister resident and consul-general of the United States for Siam. Boyd assumed the dual office, and performed his official duties until February 11, 1893. His salary was paid him until July, 1892.

II.

July 12, 1892, Boyd, being, as he was advised and believed, hopelessly ill, obtained a leave of absence, with permission to visit the United States. August 27, 1892, he arrived at his home in Missouri. His leave of absence expired October 26, 1892. After that date his health fluctuated until June 22, 1894, when he died. Plaintiff, Margaret M. Boyd, is Sempronius H. Boyd's widow and executrix.

III.

Before leaving Bangkok, believing his illness would terminate fatally, and being desirous to protect the interests of the Government during his absence and until the then expected arrival from the United States of Robert M. Boyd, whom Sempronius Boyd desired should act as consul-general, the latter called to his aid Lewis A. Eaton (now a plaintiff herein, who was then a missionary at Bangkok) and asked him to take charge of the consulate and its archives. Thereupon the following let-

ter, dated June 21, 1892, was written by Boyd, and the following document was signed by Eaton:

"U. S. LEGATION AND CONSULATE-GENERAL,  
"Bangkok, June 21, 1892.

"KROM LUANG DEWAWONGSEE VAROPROKAN,  
*Minister for Foreign Affairs:*

"MONSIEUR LE MINISTRE: It is with exceeding regret to me to be forced to abandon my diplomatic and consular duties at the Court of His Majesty, with the enjoyment, pleasure, comfort, and genuine friendship so marked and distinguished, which the representative of the U. S. fully appreciated and imparted to his Government.

"All the physicians advise me to go soon to a cold climate. The President has wired me to that effect. In 20 or 30 days I may be strong enough for a sea voyage, of which I will avail myself. I am authorized to designate and do designate L. A. Eaton vice-consul-general until I am able to assume. If not incompatible with public affairs, I beg you to so regard him.

16 "Monsieur le Ministre, I am too weak and feeble to call in person, which I would so much like to have done, and expressed my thanks and that of my Government to the foreign office and attachés.

"With assurance of my high consideration, I have the honor to be, Monsieur le Ministre, your obedient servant,

"S. H. BOYD."

"KINGDOM OF SIAM, U. S. LEGATION,  
"Bangkok, June 23rd, 1892.

"I, L. A. Eaton, citizen of the United States of America, residing in Bangkok, in the Kingdom of Siam, and being by the Hon. S. H. Boyd, U. S. minister resident and consul-general, because of sickness and inability to discharge the duties devolving upon him as such officer, have been appointed, empowered, authorized, and nominated to H. E. the President of the United States, acting consul-general for the Kingdom of Siam, and having formally accepted the same, I do solemnly swear that I will faithfully discharge the duties of the office, conform to the requirements of the State Department at Washington, D. C., preserve the property of the United States under my charge, and turn over and deliver at the termination of my official position everything belonging to the Government under my control. So help me God.

"L. A. EATON."

"KINGDOM OF SIAM, BANGKOK,  
"U. S. Legation, June 23rd, 1892.

"L. A. Eaton, being this day appointed by me acting consul-general, was by me duly sworn to the facts in the statement above his signature preparatory to the discharge of his duties.

"Witness my hand and official seal day and date above.

[SEAL.]

"S. H. BOYD,  
"Min. Res. and C. G., U. S. A."

Boyd believed he had authority for this action.

## IV.

At the date of the letter aforesaid Sempronius H. Boyd was physically unable to perform the duties of his office, and Robert M. Boyd, who had been appointed vice-consul-general November 10, 1891, had not qualified as such officer, but had left Siam for the United States about March 30, 1892, and in June, 1892, was in the United States.

Robert M. Boyd arrived in Bangkok Feb. 11, 1893, and his recognition as vice-consul-general was asked of the Siamese Government on Feb. 13, 1893. This was done by Eaton in pursuance of a letter to Eaton dated Nov. 22, 1892, from the Secretary of State, who forwarded therewith Boyd's commission of Nov. 10, 1891. Boyd was recognized accordingly in May, 1893, and was in undisputed discharge of the duties of the office from and after May 18, 1893.

## V.

Sempronius H. Boyd received leave of absence and left Siam for the United States July 12, 1892, and in due course arrived there. The period of sixty days after his arrival expired October 26, 1892. He did not return to his post.

## VI.

Eaton acted under whatever authority was given him by the communication appearing in Finding III, and with the approval of the Department of State.

The Department acknowledged his communications and acted upon them as communications from a person authorized to perform the duties of minister resident and consul-general in the emergency then existing. Boyd, upon his departure from Bangkok, transferred the charge of the legation and consulate-general to Eaton. At the time of Boyd's departure there was in Siam no vice-consular officer regularly appointed and qualified to assume the official duties. Robert M. Boyd had been appointed to that position November 10, 1891, but he had not at 17 the date of the minister's departure from Siam given bond or qualified to assume the duties. The Department of State regarded the temporary appointment of Eaton as required by the emergency.

## VII.

June 13, 1892, Eaton began the discharge of the duties imposed upon him by Sempronius H. Boyd; he took an oath of office June 23, 1892; from July 12, 1892, to and including May 17, 1893, he was in sole charge of the interests of the Government at Bangkok, and performed whatever duties were required there of either a minister resident or a consul-general, with the knowledge of the Department of State and with that Department's approval.

## VIII.

September 2, 1892, Eaton executed (under instructions from the Department of State) an official bond calling himself acting consul-general of the United States at Bangkok; this was received at the

Department of State and was approved January 3, 1893; subsequently, under instructions from the Department of State, dated January 24, 1893, he executed another bond as vice-consul-general of the United States at Bangkok, which was approved by the Secretary of State April 23, 1893. Both of these bonds bore date June 13, 1892, with the knowledge and consent of Eaton's sureties thereon, and were so dated because of a pencil memorandum on each bond when received in blank by Eaton from the Department of State, directing him to insert the date of his appointment in the blank space reserved for the date.

## IX.

Eaton rendered to the accounting officers of the Treasury his account for salary for the entire period of his service, in which he charged and claimed one-half of the salary of \$5,000 per annum appropriated for said post of minister resident and consul-general, from July 12, 1892, to October 26, 1892; that is, from the departure of the minister to and including the date on which the leave of absence for sixty days (excluding transit time) expired, and the full salary at the rate of \$5,000 per annum from October 27, 1892, to May 17, 1893, inclusive.

## X.

Eaton also rendered with his salary account a return of all fees collected during the entire period of his service, both fees official and unofficial, including fees notarial and fees and fines received in the United States consular court at Bangkok, amounting in all to \$245.41; these fees are set forth in Exhibit C to the petition. During the period in dispute in this case Eaton did not assume to act as interpreter or prison keeper nor assume to receive pay as such, nor did he receive pay other than as is shown in these findings; but it does not appear that he was replaced in either post, nor does it appear whether there were any actual services as interpreter or prison keeper to be performed, or that any other person performed service as interpreter or prison keeper.

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## XI.

In the settlement of Eaton's salary accounts by the Treasury the total amount of fees received, to wit, \$245.41, was charged to him and covered into the Treasury. The one-half salary from July 12, 1892, to October 26, 1892, amounting to \$726.90, was suspended for "further information," which was thereafter furnished; but this sum remains unpaid. The full salary from October 27, 1892, to May 17, 1893, amounting to \$2,792.35, as approved by the Department of State, was allowed and credited. Deducting from this \$245 leaves in Eaton's favor a balance of \$2,546.94, which was certified to his credit by the First Comptroller December 4, 1893, no part of which has been paid.

## XII.

Eaton also rendered to the Department of State his account of disbursements from the contingent fund of the legation and consulate-general from July 1, 1892, to April 30, 1893, which was there approved.

In the settlement of said accounts by the accounting officers of the Treasury the sum of \$5.73, expended by Eaton for candles and lanterns, was suspended for information, which was thereafter furnished, but said sum remains disallowed and unpaid.

### XIII.

The items composing the sum of \$3,456.98, for which Eaton prays judgment as hereinbefore set forth, are:

(a) Notarial and unofficial fees (\$114.41) and consular court fees (\$63), erroneously included as official consular fees, and charged to claimant per report No. 162708.....	\$177.41
(b) One-half the salary of the post at Bangkok, from July 12, 1892, to October 26, 1892, suspended per report No. 162708, yet unpaid.....	726.90
(c) Balance found due and certified in favor of claimant by the First Comptroller December 4, 1893, per report No. 162708, no part of which has been paid.....	2,546.94
(d) Item of contingent expenses, suspended per report No. 162708, due and unpaid.....	5.73
<b>Total</b> .....	<b>3,456.98</b>

Among the fees aforesaid (in item "a") were two items for the settlement of the estates of John Robertson, \$9.72, and that of J. M. Small, \$58.19, no part of which has been paid.

### CONCLUSION OF LAW.

Upon the foregoing facts the court find as conclusion of law that the petition of Sempronius H. Boyd's executrix be dismissed.

Judgment in favor of the plaintiff, Lewis A. Eaton, for \$3,456.98.

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### V.—*Opinion of the court.*

DAVIS, J., delivered the opinion of the court:

While Sempronius H. Boyd held the dual office of minister and consul-general in Siam he fell seriously ill, and, obtaining the proper leave of absence, he returned to the United States, where he remained until his death, which occurred June 22, 1894. His statutory leave of absence with pay ceased October 26, 1892, after which date he had no claim to salary.

Before leaving Bangkok he asked Eaton (a plaintiff herein), then a missionary in Siam, to take charge of the consulate and its archives. Boyd wrote the minister of foreign affairs of Siam informing him of his contemplated departure, and that he designated Eaton "vice-consul-general." Two days later (June 23, 1892) Eaton took an oath which contained the statement that he had been "appointed, empowered, authorized, and nominated to" the President "acting consul-general for the Kingdom of Siam;" that he accepted the office and swore to faithfully discharge the duties of the office, conform to regulations, preserve the Government property, and "turn over and deliver, at the termination of my official position, everything belonging to the Government under my control."

The same day Boyd stated, under his hand and seal, writing as "minister resident and consul-general," that he had that day appointed Eaton acting consul-general. Previous to this (November 10, 1891) Robert



M. Boyd, a son of Sempronius Boyd, had been appointed vice-consul-general; he had not, however, qualified as such officer, and left for the United States March 30, 1892, whence he did not return. His appointment under these circumstances has no bearing upon this case.

The statute makes a salary allowance to ministers and consuls absent with leave for a period not exceeding sixty days after their arrival at their homes.

We have now to decide as to Eaton's status during Boyd's absence. Boyd, the minister, acted under the spur of necessity, as he was forced to suddenly leave his post, and having no secretary of legation to assume the duties of the office, he turned to Eaton for aid as a fellow-citizen in a city where few Americans could be found. In the appointment of Eaton, Boyd exercised all the power he possessed and intended to use all this power; the action was reported to the Department of State, and, as the Assistant Secretary said, "the temporary appointment of Mr. Eaton was therefore required by the emergency;" the Assistant Secretary further says as to Eaton's official dispatches, "they were duly acknowledged by the Department as communications from a person authorized to perform the duties of minister resident and consul-general in the emergency then existing." Eaton took charge of the office and performed the duties of minister resident and consul-general during Boyd's illness until the latter's departure from Bangkok, and for this period Eaton makes no claim for compensation. July 13, 1892, Eaton informed the Department of Boyd's departure and that he had assumed charge of the legation and consulate-general; he remained in charge to (and including) May 17, 1893, during this time performing the duties of the combined offices. A form of bond was sent Eaton by the Department of State describing him as "acting consul-general," and this was afterwards amended by the Department, when he was described as "vice-consul-general." Both bonds were approved by the Department of State as required by law. (R. S., sec. 1698.)

It has long been settled that a vice-consul, acting during the absence of his superior or during a vacancy in the office, shall be compensated from the salary of that officer. This was settled before the act of August

18, 1856, the act reorganizing the consular service. In the case  
20 of Coxie, who, without regular appointment, remained in charge of the consulate in the Barbary States after the death of his father (the consul), the Attorney-General advised the President that the salary be paid him, saying:

"The public service requires that the duties of the office should be discharged by someone, and where, upon the death of the consul, a person who is in possession of the papers of the consulate enters on the discharge of its duties and fulfills them to the satisfaction of the Government, I do not perceive why he should not be recognized as consul for the time he has acted as such and performed the services to the public, and if he is so recognized the law of Congress entitles him to his salary." (Op. Atty. Genl., vol. 2, p. 521.)

June 3, 1856, Mr. Marcy, Secretary of State, asked of the Attorney-General the following questions:

"1. When a consul is absent from his post, is the person whom the consul, with the sanction of the Department, has left in charge of the consulate and performing the duties entitled to the statute salary?



"2. If a consulate becomes vacant by death, resignation, or removal of the incumbent, is the individual who shall have been placed by a minister or other authorized agent of the Government in charge of the office entitled to the salary?"

Mr. Cushing, in answer to Mr. Marcy's inquiries, held "that the substitute consul, or locum tenens, is to be paid out of the salary or to go uncompensated," and said:

"1. A substitute or vice-consul left in charge of the consulate during the temporary absence of the consul is to be compensated out of the statute emoluments of the office, subject to the regulations of the Department.

"2. An acting consul, in charge of a consulate during actual vacancy of the consulate, is entitled to receive the statute compensation of the office." (7 Op. Atty. Genl., 714; see also Wharton's Digest, vol. 1, sec. 118, p. 772.)

Section 1695 (R. S.) authorizes the President—

"To define the extent of country to be embraced within any consulate or commercial agency, and to provide for the appointment of vice-consuls, vice-commercial agents, deputy consuls, and consular agents therein, in such manner and under such regulations as he shall deem proper, but no compensation shall be allowed for the services of any such vice-consul or vice-commercial agent beyond nor except out of the allowance made by law for the principal consular officer in whose place such appointment shall be made."

Section 1703 (R. S.) provides that:

"Every vice-consul and vice-commercial agent shall be entitled, as compensation for his services as such, to the whole or so much of the compensation of the principal consular officer in whose place he shall be appointed as shall be determined by the President, and the residue, if any, shall be paid to such principal consular officer."

Vice-consular officers are those who replace the chief of post during his absence, and are not to be confounded with deputy consular officers who act during the presence of the superior. (Cons. Reg. of 1888, paragraphs 19 and 31, pp. 7 and 13.) Compensation of such officers is thus fixed by the regulations (sec. 471, Reg. of 1888):

"1. In case the principal officer is absent on leave for sixty days or less in any one calendar year and does not visit the United States, the vice-consular officer acting in his place is entitled to one-half of the compensation of the office from the date of assuming its duties, unless there is an agreement for a different rate, the principal officer receiving the remainder. But after the expiration of the sixty days, or after the expiration of the principal's leave of absence (if less than sixty days), the vice-consular officer is entitled to the full compensation of the office.

"2. If the principal visits the United States on such leave and returns to his post, the foregoing rule will include the time of transit, both from and to his post, as explained in paragraph 460. But if the principal does not return to his post, either because of resignation or otherwise, the rule will embrace only the time of absence not exceeding sixty days, together with the time of transit from his post to his residence in the United States."

While section 1742 of the Revised Statutes provides that:

"No diplomatic or consular officer shall receive salary for the time during which he may be absent from his post, by leave or otherwise, beyond the term of sixty days in any one year; but the time equal to that usually occupied in going to and from the United States, in the case of the return on leave of such diplomatic or consular officer to the United States, may be allowed in addition to such sixty days."

The compensation of a vice-consular officer acting during his principal's absence (when alone he can act) is paid out of the compensation of his principal, and continues during the principal's absence, even if that absence exceeds the statutory sixty days. (12 Opin. Att. Gen., 410.)

In settling the accounts of Boyd and Eaton the Treasury allowed Boyd full salary to (including) July 11, 1892, and one-half salary after his departure from Siam (July 12, 1892) to (including) October 26, 1892, when his sixty days' leave with pay (excluding transit time) expired.

The statute stopped Boyd's salary October 26, 1892, which was sixty days after his arrival in the United States, and his claim for salary after that date and to February 11, 1893, was not approved by the Department of State nor paid, nor should it be.

Eaton's accounts as vice-consul-general were approved by the Department of State, being presented upon the theory that he was entitled to full salary (at the rate of \$5,000 per annum) from October 27, 1892, to (including) May 17, 1893. The Treasury did not allow the claim made by Eaton for one-half salary from July 12, 1892, to October 26, 1892, to wit, from the date of Boyd's departure from Siam to the date when his leave with pay expired. The reason for this was that the Comptroller understood there was an agreement between Boyd and Eaton by which Eaton was to receive only the salaries of interpreter and prison-keeper to the legation.

Eaton gave a bond as soon as he could. The form of this bond was prescribed by the Department of State, which later became dissatisfied with its form and sent him another bond in blank, which he diligently perfected and returned to the Department. It is suggested that he is not entitled to the salary of the office for the period between his appointment by Boyd and the date of the approval of the bond, although he had entered upon the duties of the office and performed them during the period in question.

The general rule is that a vice-consul is entitled to compensation when his chief is absent, and then from the date of assuming the duties of the office. (Cons. Reg. 1888, sec. 471, clause 1, p. 167.) If Eaton had been appointed in due course by the Secretary of State prior to entering upon the duties of the office there could be no question now as to his rights to the pay. But as he was designated by Boyd prior (necessarily) to confirmation by the Department and had to await approval from that Department—instructions and a form of bond—a period necessarily elapsed between his designation to the office and the approval of his bond by the Department. In the nature of things this was unavoidable. It is prescribed by the regulations and has long been the custom for the pay of a vice-consular officer to begin upon the date when he assumes the duties of his office; that is, upon the departure of his superior officer, and this custom is of great if not controlling weight. (U. S. v. Moore, 95 U. S., 763; U. S. v. State Bank, 6 Peters, 29; U. S. v. McDaniel, 7 id., 1.)

22 It is true that the vice-consul must "before he enters on the execution of his trust give bond with such sureties as shall be approved by the Secretary of State." (Sec. 39, p. 16, Cons. Reg., 1888.) And this bond must be received, approved, and filed before his accounts can be adjusted at the Treasury. This, however, does not necessarily affect the right to compensation during the period between appointment and receipt of bond.

We therefore conclude that Eaton is entitled to one-half the salary of the post from July 12, 1892, to October 26, 1892, and to full salary from that date to May 17, 1893. (*Rex v. Lonsdale*, 1 Burrow, p. 447; *United States v. Bradley*, 10 Peters, p. 343; *United States v. Linn*, 15 Peters, p. 313; *City of Chicago v. Gage*, 95 Ill., p. 593; *State v. Toomer*, 7 Rich. S. C. Law, p. 216; *State v. Churchill*, 41 Mo., p. 41; *Sprowl v. Lawrence*, 33 Ala., p. 674; *People v. Holley*, 7 Wendell (N. Y.), p. 481; *State v. County Court*, 44 Mo., p. 230; *State v. Porter*, 7 Ind., p. 294; *State v. Falconer*, 44 Ala., p. 696; *State v. Colvig*, 15 Oreg., p. 57; *State v. Peck*, 30 La. An., p. 280; *Kearney v. Andrews*, 10 N. J. Chan., p. 70; *State of Maryland v. Commissioners*, 29 Md., p. 516; *Speake v. United States*, 9 Cranch., p. 28; *Ross v. Williamson*, 44 Ga., p. 501; *State v. Hadley*, 27 Ind., p. 496.)

In *United States v. Flanders* (112 U. S., p. 88), the Supreme Court held:

"If he is appointed, and acts and collects the moneys and pays them over, and accounts for them, and the Government accepts his services and receives the moneys, his title to the compensation necessarily accrues unless there is a restriction growing out of the fact that another statute says that he must take the oath 'before being entitled to any of the salary or other emoluments' of the office. But we are of opinion that the statute is satisfied by holding that his title to receive, or retain, or hold, or appropriate, the commissions as compensation, does not arise until he takes and subscribes the oath or affirmation, but that when he does so his compensation is to be computed on moneys collected by him from the time when, under his appointment, he began to perform services as collector, which the Government accepted, provided he has paid over and accounted for such moneys" (p. 91).

On this branch of the case Eaton will recover one-half salary from July 12, 1892, to October 26, 1892, amounting to \$726.90; full salary from October 27, 1892, to May 17, 1893 (\$2,792.35), less the fees charged to him, to wit, \$245.41, that is to a balance of \$3,273.84.

As to the smaller items of his account, these are for fees received for unofficial and notarial services, and should be allowed. (*U. S. v. Mosby*, 133 U. S., p. 287; *Stahel v. U. S.*, 26 C. Cls. R., p. 193.)

The sum of \$63, fee and fines, collected in the consular court are for services not required by statute nor specified as official in the consular regulations, and should be allowed. (Sec. 4120, R. S.; sec. 1396, p. 472, U. S. Cons. Reg. of 1888.)

These fees were expended for consular court expenses, for which Eaton has not been repaid. The petty item for lights upon the King's birthday was approved by the Department of State, and appears to be a charge within the discretion of that Department; it is therefore allowed.

Judgment in favor of Plaintiff Eaton for \$3,456.98.

Petition of Sempronius H. Boyd's administratrix dismissed.

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VI.—*Judgment of the court.*

MARGARET M. BOYD, EXECUTRIX OF SEMPRONIUS H. Boyd, decd., and Lewis A. Eaton, <i>vs.</i> THE UNITED STATES.	}	Nos. 18527 and 18691 consoli- dated.
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At a Court of Claims, held in the city of Washington on the 10th day of February, A. D. 1896, judgment was ordered to be entered as follows:

That the petition of Margaret M. Boyd, executrix of Sempronius H. Boyd, decd., be dismissed, and do order, adjudge, and decree that the said Lewis A. Eaton do have and recover of and from the United States the sum of three thousand four hundred and fifty-six dollars and ninety-eight cents (\$3,456.98).

BY THE COURT.

24

VI.—*Application for and allowance of appeal.*

LEWIS A. EATON <i>v.</i> THE UNITED STATES.	}	18691.
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From the judgment rendered in the above-entitled cause on the 10th day of February, 1896, in favor of the claimant, the defendants, by their Attorney-General, on the 16th day of April, 1896, make application for and give notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,  
*Asst. Attorney-General.*

Filed April 16, 1896.

Allowed in open court, April 20, 1896.

WILLIAM A. RICHARDSON,  
*Chief Justice.*

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## In the Court of Claims.

MARGARET M. BOYD, EXECUTRIX OF SEMPRONIUS H. Boyd, decd., and Lewis A. Eaton, <i>vs.</i> THE UNITED STATES.	}	Nos. 18527 and 18691 consoli- dated.
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I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusions of law thereon, of the opinion of the court, of the judgment of the court, of the application of the Attorney-General for the allowance of an appeal to the Supreme Court of the United States and the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 7th day of May, 1896.

[SEAL.]

JOHN RANDOLPH,  
*Asst. Clerk Court of Claims.*

(Indorsement on cover:) Case No. 16295. Term No. 174. The United States, appellant, vs. Lewis A. Eaton. Court of Claims. Filed May 9, 1896.